***THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY**

–

W.P.NOS. 22149, 22196, 22204, 22219 AND 22256 OF 2004

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% 08-12-2004

J.Raghuraj Goud S/o.J.Satyanarayana .. Petitioner

vs.

$ The Sub-Inspector of Police, Kukatpally P.S., R.R.District and others.

..Respondents

! Counsel for the Petitioner : Sri A.Ramanarayana

^ Counsel for Respondent : G.P. for Home

<Gist :

>Head Note :

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1. AIR 1992 Supreme Court 1930
2. AIR 1977 Supreme Court 2401
3. AIR 1976 Supreme Court 1672

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 22149 of 2004

Between:

J. Raghuraj Goud, S/o. J. Satyanarayana,

R/o. 8-3-228/1280/309, Jawaharnagar, Yousufguda, Hyderabad.

..... PETITIONER

AND

1 The Sub-Inspector of Police, Kukatpally P.S., Rangareddy District.
2 A. Rami Reddy, Presently working as Sub-Inspector of Police, Kukatpally

P.S., Ranga Reddy District.
3 Mohammed Afzal, S/o. Mohammed Haneef, 10-1-1190, A.C. Guards,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an appropriate writ, order or direction more particularly in the nature of writ of Mandamus set aside the F.I.R. in Crime No. 782 of 2004 on the file of 1st respondent herein.

Counsel for the Petitioner:MR.A.RAMANARAYANA

Counsel for Respondent No.1: GP FOR HOME

Counsel for Respondents 2 and 3: None appeared

WRIT PETITION NO : 22196 of 2004

Between:

1 J. Raghuraj Goud, S/o. J. Satyanarayana,
R/o. H.No. 8-3-228/1280/309, Jawaharnagar, Yousufguda, Hyderabad.
2 B. Laxminarayana, S/o. Late Ganesh Rao,
R/o. Flat No.401, Plot No.127, Siddhartha Nagar, Vengalrao Nagar Colony, Hyderabad.

..... PETITIONERS

AND

1 The Sub Inspector of Police, Kukatpally Police Station, Ranga Reddy District.
2 A. Rami Reddy, S/o. Not Known to the Petitioners,
Presently working as Sub-Inspector of Police, Kukatpally Police Station,

Ranga Reddy District.
3 Mohammed Afzal, S/o. Mohammed Haneef, R/o. 10-1-1190, A.C. Guards, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly in the nature of Writ of Mandamus set aside the F.I.R. in Crime No.781 of 2004 on the file of 1st respondent herein.

Counsel for the Petitioner:MR.A.RAMANARAYANA

Counsel for the Respondent No.1: GP FOR HOME

Counsel for Respondents 2 and 3: None appeared

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WRIT PETITION NO : 22204 of 2004

Between:

1 J.Raghuraj Goud S/o.J.Satyanaryana, R/o.H.No.8-3-228/1280/309,

Jawaharnagar, Yousufguda, Hyderabad.

2 C.Beerappa S/o.C.Sobanna,H.No.1-126/1,Motinagar, Bobbuguda, Hyderabad.

..... PETITIONERS

AND

1 The Sub-Inspector of Police
Kukatpally Police Station, Rangareddy Dist.

2 A.Rami reddy S/o not known, Presently working as Sub-Inspector of Police, Kukatpally Police Station, Rangareddy Dist.

3 Sahhmir Ahsan S/o.S.Ashar Ashan, Plot No.258 Road No.14, Banjara Hills, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly in the nature of Writ of Mandamus quashing the F.I.R. in Crime No.833/2004 on the file of 1st respondent herein,.

Counsel for the Petitioner:MR.A.RAMANARAYANA

Counsel for Respondent No.1: GP FOR HOME

Counsel for Respondents 2 and 3 : None appeared

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WRIT PETITION NO : 22219 of 2004

Between:

1 J.Raghuraj Goud, S/o.J.Satyanarayana, R/o.H.No.8-3-228/1280/309, Jawaharnagar,Yousufguda, Hyd.

2 Shaik Feroz Basha, S/o.Shaik Nane Jani, R/o.H.No.14-1-129/225, Padmavathinagar, Borabanda, Hyderabad.

..... PETITIONERS

AND

1 The Sub-Inspector of police, Kukatpally police station, RR Dist.
2 A.Rami Reddy, S/o.not known, Presently working as Sub-Inspector of

Police, Kukatpally police Station, RR Dist.
3 Sahhmir Ahsan, S/o.S.Ashar Ashan, R/o.plot No.258, Road No.14, Banjara

Hills, Hyd.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly in the nature of Writ of Mandamus set side the FIR. in Crime No.832/2004 on the file of 1st respondent herein and pass.

Counsel for the Petitioner:MR.A.RAMANARAYANA

Counsel for Respondent No.1: GP FOR HOME

Counsel for Respondents 2 and 3: None appeared

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WRIT PETITION NO : 22256 of 2004

Between:

1 J. Raghuraj Goud S/o J. Satyanarayana
R/o H. No. 8-3-228/1280/309, Jawaharnagar, Yousufguda, Hyderabad
2 E. Laxminrayana S/o Balaswamy
R/o H. NO. 1-128/3, Motinagar, Borabanda, Hyderabad-18

..... PETITIONERS

AND

1 The Sub-Inspector of Police, Kukatpally Police Station, Ranga Reddy District
2 A. Rami Reddy S/o not known, presently working as Sub-Inspector of

Police, Kukatpally Police Station, Ranga Reddy District
3 Mohammed Afzal, S/o Mohammed Haneef, R/o 10-1-1190, A.C. Guards,

Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly in the nature of Writ of Mandamus set-a side the FIR in Crime No. 515 of 2004 on the file of 1st respondent herein,

Counsel for the Petitioner:MR.A.RAMANARAYANA

Counsel for Respondent No.1: GP FOR HOME

Counsel for Respondents 2 and 3: None appeared

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.NOS. 22149, 22196, 22204, 22219 AND 22256 OF 2004

COMMON ORDER:

These five writ petitions are filed by the same petitioner seeking identical relief, but with reference to different F.I.Rs. The respondents are common to all the writ petitions. Hence, they are disposed of through a common order. The petitioner has prayed for a writ of mandamus to quash the respective F.I.Rs.

The petitioner submits that he functioned as an office bearer of Hari Co-operative Society, registered under the A.P. Co-operative Societies Act, and that the Society purchased lands in survey Nos. 26 and 29 of Allapur village, Balanagar mandal, Rangareddy district. The third respondent submitted several complaints before the Court of Judicial Magistrate of First Class, West and South, R.R.District, under Section 200 Cr.P.C.(for short 'the Code') alleging that the petitioner herein had re-sold several plots, which were allotted to and purchased by various individuals. The trial Court, in turn, referred the matters to the first respondent for investigation. On the basis of these complaints, Crime Nos. 782, 781,833,832 and 515 of 2004 were registered against the petitioner.

The petitioner contends that the plots, which are the subject matter of the complaints and F.I.Rs., are outside the jurisdiction of the first respondent and that they are in the limits of Sanathnagar police station. He alleges that the first respondent is pressurizing him and the other office bearers to recognize the ownership of the complainant in respect of the plots mentioned in the

complaints. The petitioner alleges that the investigation into the F.I.Rs. cannot be undertaken, since it would amount to improper exercise of power and violation of fundamental rights guaranteed under Article14 of the Constitution of India.

At the stage of admission, extensive arguments are advanced by the learned counsel for the petitioner and learned Government Pleader for Home.

Sri A. Ramanarayana, learned counsel for the petitioner, submits that though the F.I.Rs. were registered on being referred by a criminal Court, the investigation is bound to be guided by the ordinary principles of criminal law and in that view of the matter, the investigation of the matter by the second respondent is without jurisdiction. He submits that the second respondent, who is functioning as the Station House Officer of the first respondent police Station, is evincing personal interest and harassing the petitioner and other office bearers. According to the learned counsel, the reference of the complaint by the criminal Court to the first respondent was done in a routine manner, without application of mind, and in that view of the matter, the Court cannot be said to have retained any control over it. He contends that the step taken by the Court was the one under Section 202 of the Code and that being the case, the F.I.R. is amenable to be dealt with under Article 226 of the Constitution of India, on the touchstone and parameters of mala fide exercise of power.

Learned Government Pleader for Home, on the other hand, submits that all the F.I.Rs., which are subject matter of the writ petitions, came to be registered only on a reference by a criminal Court and if there is any irregularity in the same, be it as to the jurisdiction of the police station concerned or otherwise, the petitioner can certainly bring that to the notice of the Court, which referred the complaints. He submits that once the matter was referred by a Court, the first respondent, hardly has any discretion in the matter except to undertake investigation. He also points out that the petitioner has even otherwise not made out any case for interference with the F.I.Rs.

The petitioner seeks the relief of quashing of F.I.Rs. referred to in the respective writ petitions. As is well known, interference by Courts with the

F.I.Rs. and thereby with the investigation, is very rare. It is only in exceptional circumstances that the F.I.Rs. are quashed. Broadly stated, the principle is that where the application for quashing the F.I.R. is moved under Section 482 of the Code, it has to be seen whether any case can be said to have made out, even if the contents of the F.I.R. are taken as true. Where the relief is claimed in a writ petition, the test is to see whether there is any mala fide exercise of power in registering the cases and undertaking the investigation. In *M/s Jayant Vitamins Limited v. Chaitanyakumar*, the Supreme Court held that it is the statutory function of the police to investigate into the offence and that the State Government is conferred with the power of superintendence over the same. It was held that the Court would not be justified in interfering with the investigation except where compelling circumstances exist.

As observed in the preceding paragraphs, the F.I.Rs. came to be registered on references made by a criminal Court. On behalf of the petitioner, it is contended that the reference was made by the Court at a stage when there was no occasion for it to apply its mind and in that view of the matter, it has to be treated as the one under Section 156(3) of the Code. On this premise, it is contended that the investigation into the F.I.Rs. can not at all be said to be either at the instance or under the supervision of the Court. In other words, the procedure prescribed under Chapter XV of the Code is said to be inapplicable.

Section 190 of the Code, occurring in Chapter XIV prescribes three circumstances under which the cognizance of the offences can be taken by the Magistrate. They are;

a. upon receiving a complaint of facts which constitute such offence;

b. upon a police report of such facts;

c. upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

To sum up, the cognizance can be taken by a Magistrate when a complaint is directly received by him or on the basis of a report submitted to him by the police or upon the information received from any person other than the police officer. In the ordinary course of things, the cognizance of offence is taken

mostly on the basis of the report submitted by the police. The manner in which the police can bring the matters before the Court is dealt with under Chapter XII, comprising Sections 154 to 176. The procedure to be followed for receiving the complaints by the Magistrate directly from the complainants is stipulated in Chapter XV, which contains Sections 200 to 203. In a way, it can be said that Chapter XV in general and Section 200 in particular, is continuation of, or supplemental to clause (a) of sub-section (1) of Section 190 of the Code.

Whenever a complaint is received by a Magistrate under Section 200 of the Code, three courses are left open to him, namely,

a. to record the statement of the complainant and witnesses present and to take cognizance of the offence, if he is satisfied as to the existence of sufficient ground for proceeding further; or

b. to undertake inquiry into further aspects of the matter to satisfy himself as to the existence of such ground; or

c. to require investigation by police, into such complaints.

While the first aspect is dealt with under Section 200, the other two are covered by section 202. All this is summed up in Section 203, and it reads as under:

> " **Section 203:** If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

When a Magistrate chooses to direct an investigation into the complaint received by him, the matter squarely falls within the scope of sub-section (3) of Section 156 of the Code, which enlists the instances of the police officer's power to investigate cognizable cases. It would be beneficial to extract Section 156 of the code. It reads as under:

> **"Police Officer's power to investigate cognizable cases:**

1. Any officer-in-charge of a police station may, without the order of a Magistrate, investigate any cognizable cases which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

2. No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

3. Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.

Once a police officer is required by a Magistrate to investigate, it cannot be said that the Magistrate completely loses control over the matter and that the investigation referred to under sub-section (3) of Section 156 has to be treated on par with any other cases.

Placing reliance upon the Judgments of the Supreme Court in *Tularam v. Kishore Singh* and *Devarapally Laxminarayana Reddy v. V. Narayana Reddy*, it was contended that the procedure under Chapter XV of the Code does not apply to the cases where the Magistrate refers the matter to investigate by police. In this context, it may be observed that in *Tularam's case (2 supra)*, the Supreme Court held that reference by a Magistrate, of a complaint received by him, under Section 200 for investigation under Section 156(3), is always to be treated as the one at pre-cognizance stage and that he is not entitled to order investigation under other provisions. The various steps that a Magistrate can take, on receipt of a complaint under Section 200, were summed up as under:

> "**Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:**
>
> a. He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.
>
> b. The Magistrate can postpone the issue of process and direct an enquiry by himself.
>
> c. The Magistrate can postpone the issue of process and direct an

> enquiry by any other person or any investigation by the police."

Similarly, in *D. Laxminarayana's case (3 supra)*, the Supreme Court laid the law on this aspect as under:

> "Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purpose of proceeding under Section 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence with the meaning of Section 190(1)(a). If, instead of proceeding under Chapter XV, he, has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence."

The above observations clearly point to the fact that the Magistrate can exercise any of the three options, whenever he receives a complaint. The emphasis was more on the question as to when, and the stage at which, a Magistrate can be said to have taken cognizance of an offence. There is nothing to indicate in these Judgments that on referring a complaint for investigation to the police under Section 156(3) of the Code, the Magistrate becomes denuded of his power to take further steps under Chapter XV. On the other hand, the scheme of the Code clearly discloses that Sub-section (3) of Section 156 is almost an appendage to Chapter XV.

A clear distinction needs to be maintained between 'inquiry' and 'investigation' in the context of the steps to be taken in Chapter XV. 'Inquiry' and 'Investigation' are defined under Sections 2(g) and (h) respectively as under:

> "2(g) "**inquiry**' means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;
>
> 2(h) "**investigation**" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

While the former is the function of a Court pure and simple, the latter is an exercise to be undertaken by the police or any person authorized by the Magistrate. Section 202 of the Code empowers the Magistrate to postpone the issuance of process under Chapter XVI to the accused and (a) either inquire into the case by himself or (b) direct an investigation to be made by a police officer or by such other person as he thinks fit. The broad principles of inquiries and trials are contained in Chapter XIII and those of investigation are dealt with, under Chapter XII. The Code does not contain any separate provision to deal with the investigations referred to in Section 202. Therefore, one has to fall back on Section 156(3) in this regard.

Inasmuch as the investigation to be undertaken under that provision is exclusively at the instance of and on reference by the Magistrate, a police officer to whom such reference is made has no discretion to say or state that he does not intend to investigate the matter on the ground that the subject matter, according to him, does not fall within his jurisdiction. If he is of such a view, the only course open to him is to report that fact to the Magistrate, who referred the matter and seek appropriate directions. Conversely, an accused in such a matter cannot take objection to the investigation undertaken by a police officer, pursuant to the reference by a Magistrate under Section 156(3) by alleging that the subject matter does not fall within the jurisdiction of the police station. At the most, he can bring such a fact to the notice of the Magistrate concerned. If he is able to establish his plea, there is nothing in law which prevents the Magistrate from passing appropriate orders withdrawing the investigation by an officer, who was already entrusted with it, and to require another officer to undertake the same. Further, when Section 202 of the Code empowers a Magistrate to require the police officer or any person authorized by him, it is too difficult to circumscribe the limits of such investigation with reference to the limits of territorial jurisdiction of police station.

Learned counsel for the petitioner has placed reliance upon the order passed by this Court in W.P.No.12332 of 2004 dated 18.11.2004 filed by the petitioner as well as the Co-operative Society. It is true that similar relief as the one claimed in this batch of writ petitions against same respondents was claimed in that writ

petition. The FIR therein was quashed on the ground that the complaint is not at the instance of the subsequent purchasers, who can be said to have had genuine grievance. The question of jurisdiction was treated as not necessary and the FIR was quashed on the ground that no case has been made out for an offence contemplated under the relevant sections.

In the present case, extensive arguments were addressed, touching the purport of the various provisions of the Code. In all fairness, the learned counsel for the petitioner stated that interference with the F.I.Rs. in writ petitions can be only on the grounds of mala fide exercise of power or lack of jurisdiction. Since F.I.Rs. came to be registered on the reference made by the criminal Court, there is hardly any scope for making allegations as to the mala fide exercise of power. On the question of jurisdiction, it has already been held in the preceding paragraphs that even if the first respondent is otherwise satisfied that the subject matter of the F.I.R. does not fall within his territorial jurisdiction, he has no power to desist from investigating the matter. Such a course would amount to flouting the directions issued by the Magistrate. Since these aspects were not dealt with, in the order in W.P.No.12332 of 2004, I express my regrets for not being in a position to fall in line with the same, with due respect to the learned Judge who passed it.

For the foregoing reasons, the writ petitions are dismissed. It is, however, left open to the petitioner to approach the Magistrate concerned, who referred the matter for investigation and to put forward his grievance, if any. No order as to costs.

08.12.2004

Note:

Mark LR copies.

(BO)

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To

1. The Sub-Inspector of Police, Kukatpally P.S., Rangareddy District.
2. Two C.Cs. to the Government Pleader for Home, High Court Buildings,

A.P., Hyderabad, (OUT).

3. Two C.D. Copies.